

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 08 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

RAYMOND GILLEN,

Plaintiff - Appellant,

v.

TED D'AMICO; KAREN A. GEDNEY;
JOHN MARSHA,

Defendants - Appellees.

No. 06-15733

D.C. No. CV-05-00356-RAM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Robert A. McQuaid, Magistrate Judge, Presiding

Submitted April 27, 2007^{**}

Before: FARRIS, BOOCHEVER, and LEAVY, Circuit Judges.

Nevada state prisoner Raymond Gillen appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging prison officials acted with deliberate indifference to his serious medical needs in violation of the

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Eighth Amendment and Nevada Revised Statutes § 209.371. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's grant of summary judgment, Toguchi v. Chung, 391 F.3d 1051, 1056 (9th Cir. 2004), and we affirm.

The parties are familiar with the facts and prior proceedings. Gillen is serving a life sentence in Nevada. While in prison, Gillen was diagnosed with right leg gangrene and it became medically necessary to amputate Gillen's right leg above the knee. Gillen thereafter received a prosthetic leg. The prosthetic leg has been repaired several times. Gillen states that the prosthesis is ill-fitting, causing him pain and affecting his ability to walk. Following several examinations by medical staff and a review by the prison's Utilization Review Board, Gillen's request for a replacement prosthetic leg was denied. The defendants offered Gillen the alternatives of using a wheelchair, crutches, or a cane.

Prison officials may not be deliberately indifferent to a prisoner's serious medical needs. See Estelle v. Gamble, 429 U.S. 97, 104 (1976). This standard is comprised of two components. The first component is an objective inquiry whether the prisoner's medical condition is sufficiently serious. See Wilson v. Seiter, 501 U.S. 294, 298 (1992). We assume that the condition of Gillen's amputated leg constitutes a serious medical condition. The second component of the inquiry requires a culpable state of mind establishing defendants' deliberate

indifference to Gillen's serious medical condition. See id. at 298-99. With respect to this subjective component, the district court did not err in finding that defendants did not act with deliberate indifference. See Toguchi, 391 F.3d at 1058.

A difference of opinion between Gillen and his treating physicians about the offered alternatives and the preferred course of medical treatment does not constitute an Eighth Amendment violation. See Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989).

AFFIRMED.